

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-215153**DATE:** July 23, 1984**MATTER OF:** Balongas, S.A.**DIGEST:**

Even though protester's bid acknowledged amendment changing delivery period, contracting agency properly rejected the protester's bid as nonresponsive to the amended delivery period since protester inserted original delivery period on bid form.

Balongas, S.A. (Balongas), protests the decision by the Panama Canal Commission (PCC) to reject its bid as non-responsive and award to another firm under invitation for bids (IFB) No. P-84-9, for keel block cradles.

We deny the protest.

PCC rejected the Balongas bid because it concluded that Balongas had not unequivocally committed itself to deliver the keel block cradles within the time required. The IFB's original delivery terms stated in part:

"The Contractor shall deliver the assembled cradles, with connectors, at Contractor's expense, C.I.F. to Cristobal, Republic of Panama, not later than 165 calendar days after Contractor's receipt of notice of award If a later delivery is offered than required by this solicitation, it will be rejected as nonresponsive."

Balongas checked the proper box on the bid form to indicate delivery "C.I.F. Cristobal, Republic of Panama" and, on the line set aside for bidders to indicate the number of days after receipt of written notice of award that the bidder would deliver the cradles, Balongas typed in "165 days." Prior to bid opening, PCC issued two amendments to the IFB. Amendment No. 2 reduced the time for deliveries from 165 days to 150 days. Balongas' bid acknowledged both amendments, but left the "165 days" insertion unchanged. Because PCC concluded that Balongas was offering delivery in

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165 days and not 150 days as required by amendment No. 2, PCC rejected the bid for failure to comply with a material term of the IFB.

Balongas argues that by acknowledging amendment No. 2 and designating Cristobal as the place of delivery, it has committed itself to delivery in 150 days. It claims that it did not change the "165 days" insertion for fear that doing so might affect the validity of the bid. Balongas further believes that the "165 days" insertion should be disregarded as superfluous because the amendment did not require bidders to fill in the delivery time. The protester maintains that it has bound itself to perform in accordance with all the material terms of the IFB.

The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof. 49 Comp. Gen. 553 (1970). Our Office has also held that a bid which does not conform to the required delivery date is nonresponsive and that the indicated delivery date may not be corrected after bid opening even though the date allegedly resulted from a clerical error. Arvie Mfg. & Supply Co., B-210114, Jan. 4, 1983, 83-1 C.P.D. ¶ 10. When determining the responsiveness of a bid, the controlling factor is not whether the bidder intends to be bound, but whether this intention is apparent from the bid as submitted. The Entwistle Company, B-192990, Feb. 15, 1979, 79-1 C.P.D. ¶ 112.

The issue here is whether Balongas can be held legally bound to perform the contract in accordance with the amended delivery schedule. While there is no dispute that Balongas properly acknowledged the amendment that established delivery C.I.F. Cristobal in 150 days, the bid was submitted as a package. The acknowledgment has to be viewed along with Balongas' insertion of "165 days" on the line provided on the bid form for delivery time. The inclusion of this insertion creates doubt as to exactly what delivery schedule Balongas has committed itself to meet. From the protester's standpoint, at best, there are two possible reasonable interpretations concerning Balongas' proposed delivery date and one is nonresponsive. Under these circumstances, PCC was required to reject the Balongas bid as nonresponsive

since Balongas could not be held legally bound to make delivery in 150 days. See Unitron Incorporated, B-191273, July 5, 1978, 78-2 C.P.D. ¶ 7. Finally, Balongas' failure to change the "165 days" insertion was not caused by any IFB language. In fact, the IFB specifically incorporated standard form 33-A, which provides for bidders to make bid changes.

Milton J. Arnold
for Comptroller General
of the United States